

1 my folks wouldn't necessarily get into that end of
2 the business. That would be an account management
3 type business, which is another channel.

4 MR. MAHER: Could you explain a little bit
5 more why Cavalier feels these existing informal
6 mechanisms hadn't been adequate?

7 MS. WEBB: First of all, it wasn't
8 specific to hot cut. As a matter of fact, hot cut
9 isn't our biggest concern at the moment. But we do
10 have some other issues that have been raised
11 recently that unfortunately we feel like that has
12 gone on a little bit longer than we would have
13 anticipated and that we would have come to some
14 resolution prior to now, had there been some type of
15 a joint implementation team or team of some sort, a
16 formal team that existed so that we could try to
17 resolve these issues, rather than actually having to
18 go to the change organization to try to get
19 something changed.

20 MR. MAHER: I guess in what ways do you
21 see the sort of more formal mechanism that Cavalier
22 has proposed as being specific improvements over the

1 informal process?

2 MS. WEBB: Possibly a team that would meet
3 monthly, to try to improve on some of the processes
4 that we see that we're having troubles with today.
5 The new loops -- it's a very good example, the new
6 loops, that happens -- it's under C27, so it's later
7 in the process, but we've been trying to -- we've
8 been working with Verizon over the last couple of
9 months now to try to resolve these issues. There's
10 a huge customer impact with this particular issue,
11 so we've been trying to resolve it as quickly as
12 possible.

13 I found out yesterday that unfortunately,
14 nothing has been done up until this point, and we've
15 been given a completely different route that was
16 suggested that we take in trying to get the problem
17 resolved.

18 The frustration is what's transpired over
19 the last five months while we've tried to resolve
20 this problem. If there were a formal team in place,
21 maybe it could have been resolved in a more timely
22 manner. Maybe there would have been something that

1 would have been structured, meeting minutes,
2 something of that nature, where we could have
3 formalized a process.

4 Today we have a number of different
5 individuals that we go to, our account manager --
6 our account manager refers us to different
7 organizations in Verizon, the RCCC or the RCMC.
8 We're just kind of back and forth. There's nothing
9 formal today that exists.

10 MR. MAHER: There's no way today to
11 escalate an issue or do anything to sort of give
12 greater priority or emphasis to an issue than
13 through these informal mechanisms, or is that
14 already what you're talking about?

15 MS. WEBB: We try to kind of follow the
16 chain-of-command, so to speak, and we're starting at
17 this level and trying to resolve our problems.
18 There is an escalation process, and we're going
19 through that process. Unfortunately, we're hitting
20 a point on some topics and we're not getting any
21 further. And it's not helping Cavalier, it's not
22 helping Verizon, and it's certainly not helping our

1 customers.

2 And these aren't necessarily topics that
3 would -- they may be topics that we would bring up
4 in the CUF meetings that occur every quarter, not
5 necessarily something that we would take to the
6 change team or the change board.

7 MR. MAHER: CUF, CLEC user forum, CUF; is
8 that correct, just for the record?

9 MS. WEBB: Yes.

10 MR. MAHER: Verizon, do you have any
11 response in terms of their ability to escalate or
12 get these issues addressed?

13 MR. MAGUIRE: Yes, I do, surprisingly
14 enough.

15 (Laughter.)

16 I think it's -- I think there's definitely
17 a need for additional communications and additional
18 understanding. The reason I focused in on the hot
19 cuts is because in the initial testimony, it said
20 "hot cuts" and then C12 it talked about the joint
21 implementation team. That's what caused some
22 confusion. It wasn't until later on when I read C27

1 that I realized that there was a little bit of
2 overlap. So I'm not suggesting that they bring a
3 company-specific issue to the CUF or change
4 management group.

5 The reason I was a little surprised by the
6 request for a joint implementation team is because I
7 didn't -- sometimes, I realize that the CUF is not
8 the most expeditious channel to pursue a customer or
9 a company-specific issue. And I didn't want to
10 create another one, frankly. That was my biggest
11 concern. So what I was looking to do was to take
12 advantage of the existing relationships between the
13 two companies.

14 One of the things that we've discussed
15 over time with Cavalier is an operations issue needs
16 to be brought directly to the operations folks, and
17 maybe not to go to the account management person.
18 And I think this might predate Ms. Webb's
19 involvement, because at one point in time, we spent
20 a lot of time focusing on hot cuts. I'm glad to
21 hear that's not a specific issue. And we've
22 actually sent people, Verizon directors and such, to

1 sit in their centers a couple of years ago and spend
2 time working with them to make sure we opened up all
3 different channels of communications and hit
4 problems as soon as they were identified.

5 One of the things we don't want to do is
6 jeopardize an end user. That doesn't work. If an
7 end user gets squeezed between us, that's not good
8 for either company. And I realize it could hurt
9 them a lot more than it can hurt us.

10 So what I'm suggesting is that maybe we
11 need to sit down and figure out how to fine-tune the
12 existing channels so they could get right to the
13 people who are going to fix the issue sooner, rather
14 than later.

15 I spoke to their account manager and she
16 sent me a series of e-mails that I guess you sent
17 her, dealing specifically with some of the issues
18 around delivery of new loops, and I think had maybe
19 that gone to the folks that worked for me a little
20 bit quicker, we could have gotten to the resolution
21 that you sought a while ago.

22 There was a new loop issue that popped up

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1 a couple of years ago with, I believe, your
2 predecessor, and we actually invited him out to do
3 riding exercises in the trucks with our technicians,
4 so we could get to some of the miscommunications or
5 misconceptions of what existed in our world and what
6 existed in their world. The only thing that threw
7 me back a little bit is I thought we were talking
8 about building another CUF and I don't want to do
9 that.

10 MS. WEBB: I agree.

11 MR. MAHER: Ms. Webb, let me ask you this
12 question. The scope of this joint implementation
13 team as Cavalier has proposed it is pretty broad.
14 What does Cavalier envision being the issues brought
15 up in here and how was this team going to
16 distinguish between what's appropriate for the team
17 versus something that would be appropriate for the
18 CUF or some other forum?

19 MS. WEBB: I believe that most of what's
20 brought to the CUF are things that affect not only
21 one CLEC or one group, but it typically affects a
22 number of the companies or CLECs out there.

1 I think what we're -- what we envision was
2 possibly having a team, some individuals in Verizon,
3 that could make the necessary decisions and not have
4 to pass it off to a different organization or
5 question a different organization. There's no --
6 but have a team of individuals who can make
7 decisions both on Cavalier's side and Verizon's side
8 that maybe meet once a month. There are minutes
9 that are taken at this meeting and there's follow-up
10 to those different topics that we bring up and
11 discuss.

12 It would be to address process issues
13 between Cavalier and Verizon and to address them in
14 a timely manner, especially those that are
15 customer-affecting issues.

16 MR. MAHER: But basically the scope would
17 be Cavalier-specific more so than sort of
18 industrywide.

19 MS. WEBB: Yes, I'm referring to something
20 that would be Cavalier-specific, something that's
21 formal but very flexible and to some extent
22 informal, so that we could work around some of the

1 processes that we're having troubles with today.

2 MR. MAGUIRE: I don't -- I think we need
3 to continue our dialogue, but I only wonder, the
4 formality and customer-specific issues sometimes
5 work in opposite directions, because
6 customer-specific issues pop up, you know, at any
7 given moment of the day or night, and they need -- I
8 think they need to be addressed immediately. So I
9 think we have to figure out how, if they have a
10 specific issue that needs to be addressed right away
11 for an end user, we have to have a mechanism so you
12 can -- that can fly up as high as it needs to go in
13 order to be resolved immediately. Maybe that's
14 where the flexibility piece comes in; I'm not sure.

15 MR. MAHER: I don't have anything further,
16 if anyone else --

17 MR. LERNER: Okay. Issue C12, I guess
18 there's testimony that needs to be offered into
19 evidence.

20 MR. PERKINS: Cavalier moves admission of
21 Amy Webb's direct and rebuttal testimony as exhibits
22 C-13 and C-14.

1 MS. NEWMAN: And Verizon would move for
2 admission of the testimony -- direct testimony of
3 Thomas Maguire dated September 23, 2003 as Verizon
4 Exhibit 7, and the rebuttal testimony of Thomas
5 Maguire dated October 9, 2003 as Verizon Exhibit 8.

6 MR. LERNER: So received.

7 (Exhibits C-13 and 14 received.)

8 (Verizon Exhibits 7 and 8 received.)

9 MR. LERNER: Okay. Next issue is C21/V34.
10 Witnesses here have already been sworn.

11 MS. DAILEY: This issue is C21 and V34,
12 which concerns deposits. I'm going to read a
13 segment from Verizon's proposed 20.6, and then I'm
14 going to ask some questions about it. One portion
15 of this section -- I'm reading from the October
16 JDPL, provides that "if Cavalier fails to timely pay
17 (X) two or more bills in respective amounts not
18 subject to a bona fide dispute, that Verizon renders
19 at any time during any 60-day period or (Y) three or
20 more bills in respective amounts not subject to a
21 bona fide dispute, that Verizon renders at any time
22 during any 180-day period, Verizon may at its option

1 demand and Cavalier shall provide for the remainder
2 of the term of this agreement, including without any
3 limitation during any extensions of the term,
4 additional assurance of payment, consisting of
5 monthly advance payments of estimated charges." I'm
6 just going to stop there.

7 Mr. Smith, can you tell me under this
8 language, what does -- what constitutes a failure to
9 timely pay a bill?

10 MR. SMITH: Not -- when a customer does
11 not pay the bill by the pay-by date, does not submit
12 a dispute for charges that they disagree with.

13 MS. DAILEY: Okay. And how -- what's the
14 usual number of days between the date of the
15 statement and the date a bill is received? And I
16 guess I should direct that question to Mr. Whitt.

17 MR. WHITT: Well, it varies. I think
18 typically five to 15 days, but one issue we've kind
19 of run into and we're still trying to work the issue
20 is we've bought a couple of companies in the last
21 couple of years, so we still have, I guess, probably
22 300-plus invoices that we receive, and we've been

1 trying to work with Verizon to get that down to a
2 more manageable number, say 30 to 40. But I would
3 say in any month you may have five to 10 to 15
4 invoices that you may not see for 30 to 60 days,
5 depending on how you track them down and when you
6 get those. They call them "recreates," I believe,
7 in terms of regenerating the bills. We try to use
8 soft copy bills to do all the auditing, typically
9 five to 15, but then you have cases where bills you
10 have to track down for a month or more, trying to
11 find the bills.

12 MS. DAILEY: Under those circumstances
13 where they're tracking down the bills, they have
14 failed to timely pay the bill?

15 MR. SMITH: No, because actually the
16 contract I believe has language in it that says
17 either the payment is due 30 days from the bill date
18 or 20 days from the receipt of the bill, whichever
19 is later.

20 MS. SHETLER: So you recognize they're not
21 receiving a bill in some --

22 MR. SMITH: In some instances, they may

1 not receive a bill. I mean, there are times when
2 the company, Verizon, will have a software problem,
3 we'll have to rerun bills, and we wouldn't expect
4 them to pay the bill before they get it, or not to
5 have a reasonable period of time to review the bill.
6 So that's why it's either 30 days from the bill date
7 or 20 days from the bill receipt date.

8 MS. DAILEY: Have you had any problems
9 with that bill receipt issue?

10 MR. WHITT: Yes, but we've escalated,
11 we're trying to work through that. We've had
12 another call, I guess, with Virginia Ruster. We've
13 kind of escalated pretty high up to the wholesale
14 side of Verizon, I think, if we consolidate the
15 bills to 30 or 40 or you don't have 200 or 300 bills
16 floating around each month. We're trying to work
17 that issue.

18 We still run into the occasional problem
19 where you have to order recreates. That takes time
20 to recreate bills. It just does, I guess.

21 MS. DAILEY: But that's something you get
22 from Verizon.

1 MR. WHITT: Yes.

2 MS. DAILEY: Verizon, does Cavalier have a
3 history of timely or untimely payment?

4 MR. SMITH: In the past we have had issues
5 with the timeliness of payment from Cavalier.

6 MS. DAILEY: What kind of issues?

7 MR. SMITH: For a period of time they
8 refused to pay their bills in total.

9 MS. DAILEY: Were those subject to bona
10 fide dispute?

11 MR. SMITH: We don't believe they were.
12 As a matter of fact, I think there was a judgment or
13 in court they had admitted that there was portions
14 of the bill that were not in dispute but they had
15 just not paid them.

16 MS. DAILEY: Reciprocal compensation?

17 MR. SMITH: No, these were a variety of
18 different bills.

19 MS. DAILEY: Well, how does Verizon make a
20 determination as to whether a dispute is bona fide?

21 MR. SMITH: We accept all disputes from
22 the customer when they come in as a bona fide

1 dispute. We then go through our process to review
2 the disputes and then we provide back to the
3 customer a resolution letter, telling them that
4 their dispute is either granted or denied or granted
5 in part and denied in part, and then if the customer
6 disagrees with our finding, they can go ahead and
7 escalate that, so they can turn around and respond
8 to us through the escalation process on the billing
9 side that they disagree with our assessment of that,
10 and ask to have it, you know, reviewed again.

11 MS. DAILEY: So once Verizon gives you
12 written notice that it is disputing a bill, then you
13 consider that a bona fide dispute?

14 MR. SMITH: Cavalier provides us.

15 MS. DAILEY: Excuse me, I'm sorry.

16 MR. SMITH: Yes.

17 MS. DAILEY: Is there anything you would
18 like to add about that?

19 MR. WHITT: The problem is it's bona fide
20 when received but a great majority of our disputes
21 are denied, so I'm not sure if that's considered --
22 I would assume at some point that's then not a bona

1 fide dispute.

2 MS. SHETLER: Does escalating turn it back
3 into --

4 MR. SMITH: It takes it out of the
5 collection activity and puts it back into the
6 dispute category.

7 MS. DAILEY: Mr. Whitt, I think you
8 testified, and this is consistent with what you've
9 just stated, I think, that there have been payment
10 disputes that have occurred between the two parties.
11 Did the payment disputes ultimately result in
12 payments by Cavalier and also reductions by Verizon?
13 And address them separately.

14 MR. WHITT: Yes. I guess the most recent
15 settlement that we had with Verizon related to 2002,
16 and we basically effected that settlement in May of
17 this past year. And we made I guess it was close to
18 a \$20 million net payment, because Verizon also was
19 withholding millions of dollars from Cavalier as
20 part of kind of the whole dispute, in terms of the
21 billing dispute that we had.

22 But really in the last couple settlements

1 we've had, we've received millions of dollars and
2 billing credit, so in our mind it's kind of hard to
3 tell what issues, I guess, we really agreed to and
4 didn't agree to, because it was really more of a
5 lump sum settlement where you kind of make one
6 payment and then you get a big billing credit.

7 But in each case, it was multimillion
8 dollars in credits that Cavalier received.

9 MS. SHETLER: Did you want to comment?

10 MR. SMITH: I was going to say, and
11 multimillion dollar payments that were due Verizon
12 had not previously been paid.

13 MS. DAILEY: I shouldn't characterize
14 them, but -- well, I mean, do you consider Cavalier
15 to be a credit risk? Does Verizon consider Cavalier
16 to be a credit risk?

17 MR. SMITH: At this moment Cavalier is
18 paying their bills on time, but we do believe that
19 with the volatility in the industry, that at any
20 moment, things could change. We've seen that happen
21 repeatedly, with 145 bankruptcies or more over the
22 past few years. So you know, at the moment, I don't

1 know that they are, but I couldn't guarantee that
2 they aren't.

3 So I think Verizon is just looking for
4 protection for services -- or payment for services
5 that we have already provided.

6 MS. DAILEY: Are you familiar with the
7 provision that earlier in this section that talks
8 about established credit, you know, when a carrier
9 has or has not got established credit with Verizon?

10 MR. SMITH: Yes.

11 MS. DAILEY: Would you consider Cavalier
12 to have established credit with Verizon right now?

13 MR. SMITH: At this --

14 MS. DAILEY: What constitutes establishing
15 credit in Verizon's position?

16 MR. SMITH: First, when a -- if a new
17 customer were to come to us, and since this is an
18 agreement that we'll go out there and could be MFN'd
19 by another party, it's appropriate to have language
20 that pertains to new customers as well. The new
21 customer comes in and wants to sign up. You know,
22 we would assess the creditworthiness of that

1 customer. There's a variety of different ways you
2 can do it. You can run D&Bs on them, see what their
3 credit risk or credit history looks like, whether or
4 not we or anybody else has experience with them in
5 the past.

6 At this point, Cavalier is -- has been
7 paying their bills. But, you know, again, some of
8 the comments in Cavalier's testimony would lead me
9 to question their viability.

10 MS. DAILEY: Cavalier, let me ask you
11 this. Under that language that I read at the
12 beginning, what -- under current circumstances, what
13 recourse does Verizon have if you miss two payments
14 within 60 days or three payments within 180 days?

15 MR. WHITT: Well --

16 MS. DAILEY: And the payments are more
17 than 5 percent of the total amounts you owe?

18 MR. WHITT: I guess the one that comes to
19 mind that we've seen in the past as the disputes
20 escalated was really the embargo crisis we ran into
21 in Virginia where at some point, if you can't
22 resolve at higher levels within Cavalier, then an

1 embargo is placed on Cavalier and then you either
2 resolve the dispute, make payment, receive credits
3 or whatever the case may be, but I think you have a
4 30- to 60-day window to do that.

5 MS. DAILEY: What about -- Cavalier had --
6 I think Mr. Whitt testified that it pays Verizon
7 several million dollars a year in access charges.
8 Could Verizon offset that amount if it claimed that
9 Cavalier had past amounts due?

10 MR. SMITH: Verizon pays Cavalier?

11 MS. DAILEY: Did I say it backwards?

12 MR. SMITH: I'm not sure. I may have
13 heard it backwards too. You mean the money that we
14 pay to Cavalier.

15 MS. DAILEY: Yeah, I'm asking you -- let
16 me start again, see if I can get it right this time.

17 Cavalier has testified that it pays you
18 several million dollars a year.

19 MS. SHETLER: No, Verizon pays --

20 MS. DAILEY: Cavalier has testified that
21 Verizon pays Cavalier several million dollars.
22 Okay. I said "it." Could Verizon offset the access

1 charges that it owes Cavalier against the money that
2 Cavalier owes Verizon?

3 MR. SMITH: We believe that potentially an
4 offset would be available to us, under common law.
5 However, I'm not sure that the volume of dollars
6 that we pay to Cavalier exceeds or would cover the
7 amount that Cavalier might owe to Verizon.

8 MR. LERNER: What's the history between --

9 MR. WHITT: Verizon has actually in the
10 past has offset when we've had disputes and has
11 basically held back money saying it was an offset.
12 It's roughly a million dollars a month, so if there
13 were a few bills, depending on which bills, if there
14 were a handful of bills we didn't pay, the million a
15 month would be more than enough to cover the bills
16 that we were, I guess, disputing that maybe they
17 didn't agree with the disputes.

18 MR. LERNER: But as far as credit risk
19 goes, a general rule, is Verizon a net payer or is
20 Cavalier a net payer?

21 MR. WHITT: We're a net payer to Verizon.

22 MR. SMITH: By approximately a million and

1 a half dollars a month, I think it is.

2 MS. DAILEY: And I think -- the
3 testimony -- Mr. Whitt's testimony also states that
4 most of Cavalier's services are billed in advance by
5 Verizon; correct?

6 MR. WHITT: Yes.

7 MS. DAILEY: Approximately what percentage
8 of the services are billed in advance?

9 MR. WHITT: I would say 70 to 80 percent.

10 MS. DAILEY: 70 to 80 percent. Let me
11 just ask two more questions which may overlap with
12 the next issue. How many days number of notice does
13 Verizon provide Cavalier before it terminates
14 service to Cavalier for nonpayment?

15 MR. SMITH: Verizon is required to provide
16 60 days' notice of default, and then if the default
17 is not cured, we provide them 25 days' notice before
18 service would be disconnected under this agreement.

19 MS. DAILEY: And how about to refuse to
20 process new Cavalier orders, is there another
21 provision?

22 MR. SMITH: To implement an embargo?

1 MS. DAILEY: Is that what an embargo is?

2 MR. SMITH: Yes, an embargo is to not
3 process new incoming orders, I believe it's the same
4 time frame.

5 MS. DAILEY: Let me ask one more really
6 quick question of Verizon. At the end of the
7 proposed language in section 20.6, there's prose
8 that says "the fact that a letter of credit or other
9 security is requested by Verizon hereunder shall in
10 no way relieve Cavalier from compliance with
11 Verizon's regulations as to advance payments."

12 What does Verizon mean by "Verizon's
13 regulations"?

14 MR. SMITH: I would guess that that is a
15 poor choice of words in the contract language,
16 because it's not a regulation. It would be a
17 requirement under the agreement.

18 MS. DAILEY: In other words, the
19 provisions of the agreement.

20 MR. SMITH: The provisions of the
21 agreement.

22 MS. SHETLER: I have one follow-up

1 question on the advance billing issue. Could you
2 just, for the record, describe the timing of advance
3 billing, like when you received a bill versus when
4 the service is provided and when the payment is due?

5 MR. WHITT: Right. Probably the best
6 example would be our UNE loop bill; that's the
7 biggest bill. I believe that runs somewhere around
8 the 28th of the month to kind of the 27th of the
9 following month. So basically what would happen is
10 on the 28th of the month, you would be billed
11 through the 27th of the following month, and in
12 essence, payment would be due roughly at that same
13 point. So as you use those services for that month,
14 that's when payment is due. When you bill in
15 advance, basically payment becomes due as you kind
16 of use that month's worth of service, rather than
17 billing usage which is kind of in arrears.

18 MS. SHETLER: Okay. I just wanted to
19 clarify that, how that worked.

20 The other thing is not a question, it's
21 more of a request or instruction to the parties when
22 briefing this issue. We would ask the parties to

1 address the relevance of this commission's policy
2 statement on security deposits that was released on
3 December 23 of last year, that was -- I'll give you
4 the cite for it. FCC 02-337 is the FCC number. And
5 the docket number on that proceeding is 02-202 -- WC
6 docket 02-202.

7 MR. LERNER: Is there -- has all the
8 testimony of these witnesses already been admitted
9 through other --

10 MR. PERKINS: Yes.

11 MR. LERNER: Okay. We need to move to
12 C-24.

13 MR. ADAMS: I'm going to start out with
14 Mr. Whitt. Are you aware of any interconnections
15 agreements with language similar to that which you
16 have proposed here?

17 MR. WHITT: No, I'm not.

18 MR. ADAMS: How long is the usual time
19 required for an emergency stay by the Virginia
20 commission?

21 MR. WHITT: I don't know.

22 MR. ADAMS: Okay. Do you know if the